

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS .

NANCY BRADSHAW,

Defendant.

No. 06-20138-M1

ORDER DENYING IRREGULAR CRIMINAL MOTION

On June 13, 2007, Defendant Nancy Bradshaw delivered a letter to chambers that will be docketed as a pro se motion asking to serve her federal sentence at the Federal Prison Camp in Bryan, Texas.

On April 24, 2006, pursuant to a written plea agreement, Bradshaw appeared before this judge to enter a guilty plea to a criminal information charging her with one count of wire fraud, in violation of 18 U.S.C. § 1343. The information and plea agreement arose out of Bradshaw's thefts from her employer, BP Oil, Inc., of more than \$2 million. The Court conducted a sentencing hearing on December 4, 2006, at which time Bradshaw was sentenced to forty-two (42) months imprisonment, to be followed by a three-year period of supervised release. The Court also imposed restitution in the amount of \$2,170,658. Judgment was entered on December 5, 2006. Bradshaw has filed a notice of appeal.

At Bradshaw's request, the judgment included recommendations to the Bureau of Prisons ("BOP") that she be allowed to report after March 15, 2007 and that she be incarcerated in a facility as close to Memphis, Tennessee as possible. On January 25, 2007, the Court issued an order directing Bradshaw to surrender to the Federal Correctional Institution in Lexington, Kentucky on March 20, 2007. On February 27, 2007, Defendant filed a motion to extend the surrender date for four months, until after July 19, 2007. The Court issued an order granting that motion and extending the surrender report date to July 23, 2007.

On March 30, 2007, the BOP designated the Federal Correctional Institution in Pekin, Illinois for service of Bradshaw's sentence, and the Court issued an amended order to surrender, reflecting that change, on April 5, 2007.

In the instant motion, which was received on June 13, 2007, Bradshaw seeks an order directing that she be designated to serve her sentence at the Federal Prison Camp in Bryan, Texas.

Bradshaw cites no authority for the proposition that this Court has any authority to grant the relief she seeks. The Sentencing Reform Act of 1984 places strict limits on a court's power to modify a judgment imposing sentence. Fed. R. Crim. P. 35(c) permits correction of technical errors in a sentence, but only if the court acts within seven (7) days of the entry of judgment. Although Fed. R. Crim. P. 36 contains no time limitation, it permits only correction of clerical mistakes in judgments. Moreover, 18 U.S.C. § 3582(c), the only statute that

authorizes a federal judge to modify a sentence because of a change in circumstances, is inapplicable here.

Pursuant to 18 U.S.C. § 3621, persons convicted of federal crimes are committed to the custody of the BOP. That section vests the BOP with the discretion to assign prisoners to particular prisons or programs. It does not create any right to amend or modify the judgment under which a prisoner is sentenced. See United States v. Serafini, 233 F.3d 758, 779 n.23 (3d Cir. 2000) ("[A] district court has no power to dictate or impose any place of confinement for the imprisonment portion of the sentence. Rather, the power to determine the location of imprisonment rests with the Bureau of Prisons.") (emphasis in original); United States v. Jalili, 925 F.2d 889, 893 (6th Cir. 1991) (sentencing recommendation designating place of confinement is "mere surplusage"); Brown-Bey v. United States, 720 F.2d 467, 470 (7th Cir. 1983) (interpreting § 3621(b)'s language "[t]he Bureau may designate any available . . . facility" for a prisoner's confinement as not creating any statutory right to assignment to a particular prison or to transfer between prisons); Lyons v. Clark, 694 F. Supp. 184, 187 (E.D. Va. 1988) (same); cf. Lopez v. Davis, 531 U.S. 230, 238-44 (2001) (interpreting 18 U.S.C. § 3621(e)(2)(B) broadly to permit the BOP to exercise its discretion on a categorical or case-by-case basis).

This Court lacks jurisdiction to grant the relief sought in Bradshaw's motion, and the motion is, therefore, DENIED.¹

As no reasonable jurist could disagree that this Court is without jurisdiction to order to BOP to designate the Federal Prison Camp in Bryan, Texas for service of Bradshaw's sentence, it is CERTIFIED, pursuant to Fed. R. App. 24(a), that any appeal in this matter by Dwwefendant, proceeding in forma pauperis, is not taken in good faith.

IT IS SO ORDERED this 14th day of June, 2007.

s/ JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE

¹ In her letter, Bradshaw also complains about the representation her appointed attorney is providing on her appeal. The Court does not supervise appointed counsel. Defendant may, if appropriate, file a motion with the Sixth Circuit seeking appointment of a different attorney.